



48 CFR Parts 726, 729, 731 and 752

RIN 0412-AB04

United States Agency for International Development (USAID)

Acquisition Regulation (AIDAR): Foreign Tax Reporting,  
Conference Planning, and Trade and Investment Activities.

**AGENCY:** U.S. Agency for International Development.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Agency for International Development (USAID) proposes to amend its Acquisition Regulation (AIDAR) regarding contractor requirements on foreign tax reporting, conference planning, and trade and investment activities. These revisions are intended to bring the AIDAR into compliance with revised Agency policies and procedures and statutory requirements.

**DATES:** Interested parties should submit written comments at one of the addresses shown below on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*] to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments, identified by the title of the action and Regulatory Information Number (RIN) through the Federal eRulemaking Portal at <https://www.regulations.gov> by following the instructions for submitting comments. Please include your name, company name (if any), and "0412-AB04" on any attachments. If your comment cannot be submitted using <https://www.regulations.gov>, please email the point of contact

in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

**FOR FURTHER INFORMATION CONTACT:** Kelly Miskowski, USAID/M/OAA/P, [policymailbox@usaid.gov](mailto:policymailbox@usaid.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Instructions**

All comments must be in writing and submitted through the method specified in the "Addresses" section above. All submissions must include the title of the action and RIN for this rulemaking.

Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message.

All comments will be made available at

<http://www.regulations.gov> for public review without change, including any personal information provided. We recommend that you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute.

USAID will only address substantive comments on the rule. USAID may not consider comments that are insubstantial or outside the scope of the proposed rule.

**B. Background**

Several parts in the AIDAR are outdated and no longer comply with statutory requirements or current agency policies and procedures. USAID proposes to amend the AIDAR as follows:

1. 48 CFR Part 726, subpart 726.71 Relocation of U.S.

Businesses, Assistance to Export Processing Zones,

Internationally Recognized Workers' Rights refers to agency Policy Determination (PD) 20, "Guidelines to Assure USAID Programs do not Result in the Loss of Jobs in the U.S." PD 20 was replaced in agency policy by Automated Directives System (ADS) Chapter 225, Program Principles for Trade and Investment Activities and the "Impact on U.S. Jobs" and "Workers' Rights." ADS 225 is available at <https://www.usaid.gov/ads/policy/200/225>. USAID proposes amending the AIDAR to revise subpart 726.71 to prescribe when to include a new clause in section 752.226-70 in a solicitation and contract.

ADS 225 mandates that requiring offices and planners perform the necessary analyses to ensure that USAID-funded "trade and investment" activities do not: (a) Provide financial incentives and other assistance for U.S. companies to relocate operations abroad if it is likely to result in the loss of U.S. jobs; (b) Contribute to violations of internationally recognized workers' rights defined in 19 U.S.C. 2467(4); (c) Provide financial incentives for entities located outside the United States to relocate or transfer jobs from the United States to other countries or provide financial incentives that would adversely affect the labor force in the United States; and/or (d) Provide assistance for enforcement of certain rules if the enforcement would prohibit certain coal-fired or other power-generation projects. If the analyses conclude that the activity is a "gray-area" as described in that chapter, and the contract statement

of work includes either gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in ADS Chapter 225, then the requiring office will provide the contracting officer with a clause substantially the same as new section 752.226-70 to include in the solicitation and resulting contract.

2. USAID proposes to amend AIDAR Section 729.402-70 and the corresponding clause in 752.229-71 to update them to comply with current statutory requirements. The annual Department of State, Foreign Operations, and Related Programs Appropriations Act (SFOAA) mandates that agencies take certain actions to prevent taxation of foreign assistance provided with funds appropriated in an SFOAA, or to obtain full reimbursement of all taxes paid. Consistent with the statutory requirements, the AIDAR includes a clause requiring contractors to annually report the amount of foreign taxes assessed against foreign assistance funding during the preceding fiscal year and not reimbursed. The AIDAR reporting requirement has not been updated to reflect the changes Congress made to the foreign tax provision in 2014, specifically the revisions to the definition of "foreign taxes" and the types of transactions subject to the reporting requirements. The statutory definition of that term now includes all types of taxes imposed by the foreign government, including but not limited to value added taxes (VAT) and customs duties, but excluding individual income taxes assessed to local staff.

Consistent with the current version of the SFOAA, the types of reportable transactions are expanded from "commodity purchase transactions" to all taxes assessed, with the exception of any foreign tax of a de minimis nature.

3. Section 731.205-43 and the corresponding clause in 752.231-72 are amended to include the current agency policy and procedures for funding conference costs in USAID contracts. USAID proposes adding new sections 731.374 and 731.775 to include these approval policies and procedures in the cost principles for contracts with educational institutions and nonprofit organizations, respectively. USAID policy on conferences is in ADS 580 Conference Planning and Attendance, which is available at <https://www.usaid.gov/ads/policy/500/580>. USAID has revised ADS 580 several times since the AIDAR was initially amended to add these two sections; the most recent revision was in February 2021 and reduced the number of USAID employees attending a conference that triggers the requirement for the contractor to obtain the agency's prior approval from 20 to 10. This proposed rule includes this number, retains the current requirement for the contractor to obtain approval when the net conference expenses by USAID will exceed \$100,000, and revises both sections for clarity.

### **C. Regulatory Planning and Review**

Executive Orders (E.O.s) 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined "nonsignificant" under E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

#### **D. Regulatory Flexibility Act**

USAID does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

#### **E. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements.

Accordingly, USAID has submitted a request for approval of a new information collection requirement concerning this rule to the Office of Management and Budget.

The outlined information collections are an element of a proposed rule that implements USAID requirements for reporting foreign tax and conference planning. The proposed rule will amend AIDAR Section 729.402-70 and the corresponding clause in 752.229-71 to align foreign tax reporting requirements with

relevant statutory requirements (Collection 1); Section 731.205-43 and the corresponding clause in 752.231-72; and add new sections 731.374 and 731.775 (Collection 2). These last two revisions are to align the AIDAR with USAID's conference planning policy.

*1. Request for Comments Regarding Paperwork Burden.*

Submit comments, including suggestions for reducing this burden, not later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] using the method specified in the "Addresses" section above.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the AIDAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement by contacting [policymailbox@usaid.gov](mailto:policymailbox@usaid.gov). Please cite RIN Number 0412-AB04 in all correspondence.

*2. Abstract for Collection.*

Collection 1:

The public reporting burden for this collection of information is estimated as follows:

Respondents: 900

Responses per respondent: 1

Total annual responses: 900

Preparation hours per response: 1

Total response burden hours: 900

Collection 2:

The public reporting burden for this collection of information is estimated as follows:

Respondents: 20

Responses per respondent: 1

Total annual responses: 20

Preparation hours per response: 2

Total response burden hours: 40

### **List of Subjects in 48 CFR Chapter 7 Parts 726, 729, 731 and 752**

Government procurement.

For the reasons discussed in the preamble, USAID proposes to amend 48 CFR Chapter 7 as set forth below:

1. The authority citation for 48 CFR Chapter 7 parts 726, 729, 731, and 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.



2. The authority citation for 48 CFR Chapter 7 part 729 is revised to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

## **PART 726-OTHER SOCIOECONOMIC PROGRAMS**

### **Subpart 726.71 – Trade and Investment Activities, the “Impact on U.S. Jobs” and “Workers' Rights”.**

3. Revise § 726.7101 to read as follows:

#### **726.7101 Trade and Investment Activities and the “Impact on U.S. Jobs”.**

(a) *Policy.* USAID policy and required procedures in ADS 225 Program Principles for Trade and Investment Activities and the “Impact on U.S. Jobs” and “Workers' Rights” implement statutory prohibitions on obligation and expenditure of appropriated funds. ADS 225 requires Agency operating units to analyze a project or activity to ensure compliance with U.S. foreign policy objectives as stated in Section 601 of the Foreign Assistance Act (FAA) of 1961, as amended; the U.S. Government's trade and development objectives set forth in trade legislation; and related policy documents. If the analysis concludes that the project or activity meets the criteria for what the ADS chapter describes as “gray-area activities” or if the contract statement of work has the potential to evolve into what the chapter defines as a prohibited activity, then the planner must include

in the procurement request language appropriately tailored to the specific circumstances for the contract statement of work.

(b) *Special contract requirement.* The contracting officer must insert in Section H of the uniform contract format a clause substantially the same as the clause in 752.226-70 when informed by the requesting operating unit that the statement of work or statement of objectives includes gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in ADS Chapter 225.

**§ 726.7102 [Removed]**

4. Remove § 726.7102.

**Part 729—TAXES**

**Subpart 729.4—Contract Clauses**

5. Revise § 729.402-70 to read as follows:

**729.402-70 Foreign contracts.**

(a) The annual Department of State, Foreign Operations, and Related Programs Appropriations Act (SFOAA) requires USAID to take certain steps to prevent countries from imposing taxes, including value added tax (VAT) and customs duties, on U.S. foreign assistance, or if imposed, requires the countries to reimburse the assessed taxes or duties. The SFOAA also requires certain reporting to Congress on host country taxation. Because countries imposing such taxes assess them directly on contractors, USAID requires contractors to report annually on

whether taxes have been imposed and, if so, whether the foreign government reimbursed the taxes.

(b) The contracting officer must insert the clause at § 752.229-71, Reporting of Foreign Taxes in solicitations and resulting contracts when:

(1) a contract is fully or partially funded with funds appropriated under titles III through VI of an SFOAA making appropriations for the Department of State, foreign operations, and related programs, and

(2) the contract is to be performed wholly or partly in a foreign country.

## **Part 731—CONTRACT COST PRINCIPLES AND PROCEDURES**

### **Subpart 731.2—Contracts with Commercial Organizations**

6. Revise § 731.205-43 to read as follows:

#### **731.205-43 Trade, business, technical and professional activity costs—USAID conference approval requirements.**

(a) *Definitions.* As used in this section —

*Conference* means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that is funded in whole or in part by USAID.

*Net conference expense* means the total conference expenses excluding: any fees or revenue received by the Agency through the conference, costs to ensure the safety of attending governmental officials, and salary of USAID employees and USAID personal services contractors.

*Personal Services Contractor (PSC)* means any individual who is awarded a personal services contract in accordance with AIDAR appendices D or J.

*Temporary duty (TDY) travel* means official travel at least fifty (50) miles from both the traveler's home and duty station for a period exceeding twelve (12) hours.

*USAID employee* means a USAID direct-hire employee or a direct-hire federal employee from another U.S. government agency detailed to USAID.

(b) *Prior Approval.* USAID policy requires contractors to obtain contracting officer approval of the following, unless an exception in paragraph (c) of the clause at 752.231-72 applies:

(1) A conference funded in whole, or in part, by USAID when ten (10) or more USAID employees or personal services contractors are required to travel on temporary duty status to attend the conference; or

(2) A conference funded in whole, or in part, by USAID when the net conference expense funded by USAID is expected to exceed \$100,000, regardless of the number of USAID employees or USAID personal services contractors who will participate in the conference.

(c) *Allowability of Cost.* Costs associated with a conference that meets the criteria above, incurred without USAID prior written approval, are unallowable.

(d) *Solicitation Provision and Contract Clause.*  
Contracting officers must insert the clause at 752.231-72 in all

USAID-funded solicitations and contracts anticipated to include a requirement for a USAID-funded conference.

#### **Subpart 731.3 - Contracts With Educational Institutions**

7. Add §731.374 to read as follows:

##### **731.374 Conference approval requirements.**

USAID's policies regarding conference approval requirements are set forth in (48 CFR) AIDAR 731.205-43. These policies are also applicable to contracts with an educational institution.

#### **Subpart 731.7 Contracts With Nonprofit Organizations**

8. Add §731.775 to read as follows:

##### **731.775 Conference approval requirements.**

USAID's policies regarding conference approval requirements are set forth in (48 CFR) AIDAR 731.205-43. These policies are also applicable to contracts with an educational institution.

### **Part 752 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

#### **Subpart 752.2 - Text of Provisions and Clauses**

9. Add § 752.226-70 to read as follows:

##### **752.226-70 Trade and Investment Activities, the "Impact on U.S. Jobs" and "Workers' Rights"**

As prescribed in 48 CFR 726.7101(b), insert a clause substantially as follows:

##### **Trade and Investment Activities and the "Impact on U.S. Jobs"**

**(Date TBD)**

(a) Except as specifically set forth in this contract or otherwise authorized by USAID in writing, no funds or other support provided under this contract may be used for any

activity that: provides financial incentives and other assistance for U.S. companies to relocate operations abroad if it is likely to result in the loss of U.S. jobs; contributes to violations of internationally recognized workers' rights defined in 19 U.S.C. 2467(4); or provides financial incentives for entities located outside the United States to relocate or transfer jobs from the United States to other countries or provide financial incentives that would adversely affect the labor force in the United States.

(b) In the event the Contractor is requested to provide services in any of the above areas or requires clarification from USAID as to whether an activity would be consistent with the limitation set forth above, the Contractor must notify the contracting officer and provide a detailed description of the expected impact of the proposed activity. The Contractor must not proceed with the activity until advised by USAID in writing that it may do so.

(c) The Contractor must ensure that its employees and subcontractors providing trade and investment support services are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts.

[END OF CLAUSE]

10. Revise § 752.229-71 to read as follows:

**752.229-71 Reporting of Foreign Taxes**

As prescribed in (48 CFR) AIDAR 729.402-70(b), insert the following clause in applicable solicitations and resulting

contracts. The contracting officer must insert the address and point of contact at the Embassy, Mission, or M/CFO/CMP as appropriate under paragraph (d) of this clause.

**Reporting of Foreign Taxes (date TBD)**

(a) *Definitions.* As used in this clause—

*Foreign government* includes any foreign governmental entity.

*Foreign taxes* include value-added taxes and customs duties but not individual income taxes assessed to local staff.

*Local Staff* means Cooperating Country National employees.

(b) *Annual report.* (1) The Contractor must submit a report detailing foreign taxes assessed under this contract during the prior U.S. government fiscal year. The report must be submitted annually by April 16.

(2) A report is required even if the Contractor did not pay any foreign taxes during the reporting period. A cumulative report may be provided if the Contractor is performing more than one award in the foreign country.

(c) *Contents of report.* The report must contain:

(1) Contractor name.

(2) Contact name with phone number and email address.

(3) Contract number(s).

(4) Amount of foreign taxes assessed by each foreign government (listed separately) under this contract during the prior U.S. Government fiscal year.

(i) Taxes assessed on any individual transaction of less than \$500 should not be reported.

(ii) The contractor must report only foreign taxes assessed by a foreign government receiving U.S. assistance under this contract. The Contractor must not report on foreign taxes assessed by a third-party foreign government.

(5) Any reimbursements of foreign taxes received by the Contractor on the taxes reported in paragraph (c)(4) of this clause received through the date of the report.

(d) *Submission of report.* The Contractor must submit the report to: [*Contracting Officer must insert address and point of contact at the Embassy or Mission in the country in which the contract will be performed, or CFO/CMP for USAID/W-issued contracts, as appropriate*], with a copy to the Contracting Officer's Representative.

(e) *Subcontracts.* The Contractor must include this reporting requirement in all subcontracts issued under this contract. The Contractor shall collect and incorporate into the Contractor's report all information received from subcontractors pursuant to this clause.

(End of clause)

11. Revise § 752.231-71 to read as follows:

**752.231-72 Conference planning and required approval**

As prescribed in (48 CFR) AIDAR 731.205-43(d), insert the following clause in section H of all USAID-funded solicitations



and contracts anticipated to include a requirement for a USAID-funded conference.

**Conference Planning and Required Approval (Date TBD)**

(a) *Definitions.* As used in this clause—

*Conference* means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that is funded in whole or in part by USAID.

*Net conference expense* means the total conference expenses excluding: any fees or revenue received by the Agency through the conference, costs to ensure the safety of attending governmental officials, and salary of USAID employees and USAID personal services contractors.

*Personal Services Contractor (PSC)* means any individual who is awarded a personal services contract in accordance with AIDAR appendices D or J.

*Temporary duty (TDY) travel* means official travel at least fifty (50) miles from both the traveler's home and duty station for a period exceeding twelve (12) hours.

*USAID employee* means a USAID direct-hire employee or a direct-hire federal employee from another U.S. government agency detailed to USAID.

(b) *Prior Approval.* Unless an exception in paragraph (c) applies, the Contractor must obtain prior written approval from the contracting officer at least 30 days prior to committing costs, for the following:

(1) A conference funded in whole or in part by USAID when ten (10) or more USAID employees or Personal Services Contractors are required to travel on temporary duty status to attend the conference; or

(2) A conference funded in whole or in part by USAID and attended by USAID employees or USAID Personal Services Contractors, when the net conference expense funded by USAID is expected to exceed \$100,000, regardless of the number of USAID participants.

(c) *Exceptions.* Prior USAID approval is not required for the following:

(1) Co-creation conferences to facilitate the design of programs or procurements.

(2) Events funded and scheduled by the Center for Professional Development within the USAID Office of Human Capital and Talent Management.

(3) A single course presented by an instructor conducted at a U.S. Government training facility (including the Washington Learning Center or other USAID training facilities), a commercial training facility, or other venue if a U.S. Government training facility is not available.

(4) Conferences conducted at a U.S. Government facility or other venue not paid directly or indirectly by USAID, when travel of USAID employees or USAID Personal Services Contractors, light refreshments and, if applicable, costs

associated with participation of the contractor's staff are the only direct costs associated with the event.

(d) *Allowability of Cost.* Costs associated with a conference that meet the criteria above, incurred without USAID prior written approval, are unallowable.

(e) *Post-Award.* Conferences approved at the time of award will be incorporated into the contract. The contractor must submit subsequent requests for approval of conferences on a case-by-case basis, or requests for multiple conferences may be submitted at one time.

(f) *Documentation.* Requests for approval of a conference that meets the criteria in paragraphs (b) of this section must include:

- (1) A brief summary of the proposed event;
- (2) A justification for the conference and alternatives considered, e.g., teleconferencing and video-conferencing;
- (3) The estimated budget by line item (e.g., travel and per diem, venue, facilitators, meals, equipment, printing, access fees, ground transportation);
- (4) A list of USAID employees or PSCs attending and a justification for each, and the number of other USAID-funded participants (e.g., contractor personnel);
- (5) A cost comparison for at least three potential venues (including a U.S. Government owned or leased facility) and a justification if the lowest cost facility is not selected;

(6) If meals will be provided to local USAID employees or PSCs (a local employee would not be in travel status), a statement on whether the meals are a necessary expense to support the conference objectives; and

(7) A statement signed by an employee of the Contractor with authority to bind the Contractor, confirming that strict fiscal responsibility has been exercised in making decisions regarding conference expenditures, the proposed costs are comprehensive and represent the greatest cost advantage to the U.S. Government, and that the proposed conference representation has been limited to the minimum number necessary to support the conference objectives.

(End of clause)

**Luis Rivera,**

*Acting Senior Procurement Executive*

*U.S. Agency for International Development*